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8 *Attorneys for Lead Plaintiffs Banerjee & Harjai*

9 [Additional counsel on signature page.]

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

ARINDAM BANERJEE and JOGESH  
HARJAI, Individually and on Behalf of All  
Others Similarly Situated,

Plaintiffs,

v.

AVINGER, INC., JEFFREY M. SOINSKI,  
MATTHEW B. FERGUSON, DONALD  
A. LUCAS, JOHN B. SIMPSON, JAMES  
B. McELWEE, JAMES G. CULLEN,  
THOMAS J. FOGARTY, CANACCORD  
GENUITY, INC., COWEN AND  
COMPANY, LLC, OPPENHEIMER &  
CO., BTIG, and STEPHENS, INC.,

Defendants.

Case No. 17-cv-3400-CW

**STIPULATION AND ORDER  
STAYING FURTHER PROCEEDINGS  
PENDING SUBMISSION OF CLASS  
ACTION SETTLEMENT PAPERS AND  
SETTING DATES FOR FILING OF  
PRELIMINARY APPROVAL  
MOTION AND PRELIMINARY  
APPROVAL HEARING**

1 WHEREAS, on October 17, 2017, during the Initial Case Management Conference, the  
2 Court ordered the parties to pursue alternative dispute resolution by participating, at the parties'  
3 election, either in the Court's ADR Program or in private mediation;

4 WHEREAS, the parties held telephone conferences with Ms. Tamara Lang of the Court's  
5 ADR Program on October 16, 2017 and again on November 29, 2017, at which, with Ms. Lang's  
6 assistance, the parties agreed to pursue private mediation as an alternative dispute resolution  
7 mechanism;

8 WHEREAS, the parties participated in a full day private mediation session with Robert A.  
9 Meyer of JAMS (the "Mediator") on February 8, 2018;

10 WHEREAS, the parties thereafter continued their settlement discussions with each other  
11 and the Mediator over the past six weeks, and had previously stipulated to an extension of the  
12 briefing schedule on Defendants' motions to dismiss (which were filed on January 17, 2018), to  
13 allow additional time to facilitate efforts to reach a potential privately mediated resolution;

14 WHEREAS, plaintiffs filed an Amended Consolidated Class Action Complaint on March  
15 19, 2018, which was accompanied by a certification stating that all Defendants had consented to  
16 its filing;

17 WHEREAS, the parties have now reached an agreement, as set forth in a binding written  
18 memorandum of understanding, on the terms of a proposed settlement of this action;

19 WHEREAS, the parties have agreed to make best efforts to finalize a "long form"  
20 Stipulation of Settlement with customary exhibits thereto (including proposed forms of Notice to  
21 the Class) within the next 30 days;

22 NOW, THEREFORE, the parties hereby stipulate and respectfully request that the Court  
23 enter an Order providing as follows:

- 24 1. The existing schedule for the submission of briefing on the pending motions to  
25 dismiss is hereby vacated, and the motions are hereby deemed MOOT;
- 26 2. All Defendants having consented in writing to the filing of the Amended  
27 Consolidated Complaint, the Court's Order, dated March 22, 2018, directing  
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1 Plaintiffs to show cause regarding the Amended Consolidated Complaint is  
2 vacated as MOOT;

3 3. Defendants need not answer or otherwise file any motion with respect to the  
4 Amended Consolidated Complaint absent further order of the Court;

5 4. Plaintiffs shall file their motion for preliminary approval of the parties' proposed  
6 class action settlement and related papers in support thereof no later than May 1,  
7 2018, and further proceedings other than those relating to the parties' proposed  
8 settlement are hereby STAYED absent further order of the Court; and

9 5. The currently scheduled hearing on the motions to dismiss and for the next Case  
10 Management Conference (namely, May 22, 2018 at 2:30 pm) is VACATED, and  
11 instead a hearing on Plaintiffs' motion for preliminary approval shall be held on  
12 May 22, 2018 at 2:30 pm.

13 IT IS SO STIPULATED.

14 Respectfully submitted,

15 Dated: March 23, 2018

SCOTT+SCOTT ATTORNEYS AT LAW LLP

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26 *Lead Counsel for Plaintiffs and the Proposed Class*

1 Dated: March 23, 2018

WILSON SONSINI GOODRICH & ROSATI  
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*Attorneys for Defendants Avinger, Inc., Jeffrey M. Soinski, John B. Simpson, Matthew B. Ferguson, Donald A. Lucas, James B. McElwee, James G. Cullen, and Thomas J. Fogarty*

13 Dated: March 23, 2018

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*Attorneys for Defendants Canaccord Genuity, Inc., Cowen and Company, LLC, Oppenheimer & Co., BTIG, LLC, and Stephens Inc.*

**ATTESTATION**

I, John T. Jasnoch, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Staying Further Proceedings Pending Submission of Class Action Settlement Papers and Setting Dates for Filing of Preliminary Approval Motion and Preliminary Approval Hearing. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that John F. Batter, III and Doru Gavril have concurred in this filing.

/s/ John T. Jasnoch  
John T. Jasnoch (CA 281605)

**ORDER**

PURSUANT TO THE STIPULATION, IT IS SO ORDERED.

DATED: March 26, 2018.

A handwritten signature in black ink, appearing to read 'Claudia Wilken', with a long horizontal flourish extending to the right.

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The Hon. Claudia Wilken  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the United States of America that, on March 23, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses for all counsel of record (which includes counsel for all parties) in this action

/s/ John T. Jasnoch  
John T. Jasnoch (CA 281605)